

Rules and Regulations

Federal Register

Vol. 61, No. 192

Wednesday, October 2, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 90, 91, 92, 93, 94, 95, 96, 97, and 98

[Docket Number S&TD-96-004]

Removal of Selected Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends laboratory support functions and responsibilities administered by the Agricultural Marketing Services covering testing services for agricultural food commodities. These sections which were originally enacted to administer specific programs have been found to be obsolete or duplicative. Also, amendments in this rule would clarify and remove sections from the Code of Federal Regulations (CFR) thus reducing recurrent printing costs as well as streamline the operation of Agricultural Marketing Service's (AMS) commodity programs.

EFFECTIVE DATE: October 3, 1996.

FOR FURTHER INFORMATION CONTACT: James V. Falk, 202-690-4089.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the Administration's National Performance Review Program and Regulatory Reinvention Initiative to eliminate unnecessary regulations and improve the public understanding of those that remain in force.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have preemptive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they

present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Administrator of AMS determined that this action will not have a significant economic impact on a substantial number of small entities because the changes remove unnecessary, obsolete and duplicative material from the text of the regulations. This action also updates and corrects information contained in certain sections of the regulations.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the provisions to be updated have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

Background

The Secretary of Agriculture is authorized under various statutes to develop and establish efficient marketing methods and practices concerning agricultural commodities. This has usually been accomplished by promulgating and codifying regulations in the CFR.

Rapid changes in consumer preferences, together with associated changes in commodity characteristics, and analytical services have created a need to amend and modify the regulations. In addition, industry and the marketplace have been in some instances burdened with outdated and unnecessary regulatory language.

The President issued a directive in March 1995 to Federal agencies concerning their responsibilities under the Regulatory Reinvention Initiative, which is part of the National

Performance Review. The initiative has provided an impetus to develop new approaches to meet more effectively the needs of U.S. food and fiber industries, government agencies, and consumers, and still reduce the regulatory burden. To meet this initiative, regulatory text in the CFR such as voluntary grading or testing standards or other related provisions have been removed from the CFR. Name changes which better clarify and identify existing programs are also being implemented and placed in the CFR. Additionally, any regulations which are deemed outdated or obsolete will be removed. Updates and corrections are also made in certain sections of the regulations. This rule eliminates regulatory text which encompasses approximately 4 pages of the CFR.

The regulations at 7 CFR section 90.1 paragraphs (i) (j) and (m) describe laboratory support functions and responsibilities of the Science and Technology Division (S&TD) of AMS. These paragraphs will be eliminated to conform with parallel 7 CFR parts 99, 100 and 101 removed in AMS's rule in the Federal Register (60 FR 62974) on December 7, 1995. The regulations at part 99, Statistical Science Program; part 100, National Laboratory Accreditation Program concerning laboratory services, statistical science support; and part 101, Pesticide Data Program were removed because they are either reserved or contain only informational non-regulatory text.

The listing of the SD Aflatoxin Laboratory at Camilla, Georgia is removed at 7 CFR section 91.5 paragraph (a)(2)(vi) and 7 CFR part 93. The Camilla Laboratory has been closed due to the consolidation of laboratory operations.

The regulations at 7 CFR part 93, subpart B (§§ 93.10-93.14), Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products; and 7 CFR part 95, Processed Dairy Products, are being revised and removed respectively. These provisions describe tests or determinations for grade or quality attributes of processed food products that are handled by the Dairy Division or Fruit and Vegetable Division and their designates. The Midwestern Laboratory of the Science and Technology Division (S&TD) is

sometimes chosen to provide such testing services. However, these AMS Commodity Divisions often perform the tests and determinations on processed products themselves. The duplication of testing services provided by separate AMS divisions could be confusing to the public. The necessary information can best be disseminated through AMS directives or guidelines.

The name "Science Division" is being replaced with the name "Science and Technology Division" in 7 CFR parts 90, 91, 92, 93, 94, 96, 97, and 98. On October 1, 1995 the Information Resources Management Division (IRMD) merged with the Science Division to form the Science and Technology Division (S&TD). This merger of two AMS Divisions is a result of the momentum to reinvent Government by eliminating or restructuring agencies and programs of the Department. By careful sorting out of the responsibilities of the different divisions within AMS, the Science and Technology Division came into being. S&TD represents an excellent union of Agency Divisions, since advanced communications and information technology improves not only Agency commodity program support but also various laboratory programs needs. In addition, the public benefits from the increased assistance given to locate and access all kinds of technical information.

Pursuant to the provisions in 5 U.S.C. 553 (b)(B), it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in farther public procedures prior to putting this rule into effect. Accordingly, good cause exists for not postponing for 30 days the effective date of this action in the Federal Register for the following reasons: (1) The sections being removed are either duplicative, obsolete, or do not need to be in the CFR, and removal will not alter any aspect of an existing program; (2) the amendments consist of updates and corrections of information contained in the regulations; and (3) no useful purpose would be served by a delay of the effective date.

List of Subjects

7 CFR Part 90

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 92

Agricultural commodities, Laboratories, Pesticides and pests, Tobacco.

7 CFR Part 93

Agricultural commodities, Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables.

7 CFR Part 94

Agricultural commodities, Egg and egg products, Laboratories, Poultry and poultry products.

7 CFR Part 95

Agricultural commodities, Dairy products, Laboratories.

7 CFR Part 96

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 97

Administrative practice and procedure, Labeling, Laboratories, Plants, Reporting and recordkeeping requirements, Seeds.

7 CFR Part 98

Agricultural commodities, Laboratories, Meat and meat products.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 1621–1627, 7 CFR chapter I is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Part 90 is amended by removing the words "Science Division", "Science Division's", and "(SD)" and adding in their place the words "Science and Technology Division", "Science and Technology Division's", and "S&TD" respectively, everywhere they appear.

§ 90.1 [Amended]

3. In § 90.1, paragraphs (i), (j), and (m) are removed and paragraphs (k), (l), (n), and (o) are redesignated as paragraphs (i), (j), (k), and (l) respectively.

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Part 91 is amended by removing the words "Science Division" and "SD" and adding in their place the words "Science and Technology Division" and "S&TD" respectively, everywhere they appear.

3. In § 91.5, paragraph (a)(2) is revised to read as follows:

§ 91.5 Where services are offered.

* * * * *

(a) * * *

(2) *Science and Technology Division aflatoxin laboratories.* The specialty laboratories performing aflatoxin testing on peanuts, peanut products, tree nuts and other commodities are located as follows:

- (i) USDA, AMS, S&TD, 1557 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302.
- (ii) USDA, AMS, S&TD, c/o Golden Peanut Company, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714.
- (iii) USDA, AMS, S&TD, 1211 Schley Avenue, Albany, GA 31707.
- (iv) USDA, AMS, S&TD, c/o Golden Peanut Company, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805.
- (v) USDA, AMS, S&TD, 610 North Main Street, Blakely, GA 31723.
- (vi) USDA, AMS, S&TD, 107 South Fourth Street, Madill, OK 73446.
- (vii) USDA, AMS, S&TD, c/o Steven Industries, Cargill, Inc., 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742.
- (viii) USDA, AMS, S&TD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434.

* * * * *

4. In § 91.23, paragraphs (e) and (f) are revised to read as follows:

§ 91.23 Analytical methods.

* * * * *

(e) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(f) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

* * * * *

PART 92—[AMENDED]

1. The authority citation for part 92 is revised to read as follows:

Authority: 7 U.S.C. 511m, 511r.

2. Part 92 is amended by removing the words "Science Division" and "Science Division's" and adding in their place the words "Science and Technology Division" and "Science and Technology's" respectively, everywhere they appear.

1. Part 93 is revised to read as follows:

PART 93—PROCESSED FRUITS AND VEGETABLES**Subpart A—Citrus Juices and Certain Citrus Products**

Sec.

93.1 General.

93.2 Definitions.

93.3 Analyses available and location of laboratory.

93.4 Analytical methods.

93.5 Fees for citrus product analyses set by cooperative agreement.

Subpart B—Peanuts, Tree Nuts, Corn and Other Oilseeds

93.10 General.

93.11 Definitions.

93.12 Analyses available and locations of laboratories.

93.13 Analytical methods.

93.14 Fees for aflatoxin testing.

93.15 Fees for analytical testing of oilseeds.

Authority: 7 U.S.C. 1622, 1624.

Subpart A—Citrus Juices and Certain Citrus Products**§ 93.1 General.**

Domestic and imported citrus products are tested to determine whether quality and grade standards are satisfied as set forth in the Florida Citrus Code.

§ 93.2 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Acid. The grams of total acidity, calculated as anhydrous citric acid, per 100 grams of juice or citrus product. Total acidity is determined by titration with standard sodium hydroxide solution, using phenolphthalein as indicator.

Brix or degrees Brix. The percent by weight total soluble solids of the juice or citrus product when tested with a Brix hydrometer calibrated at 20° C (68° F) and to which any applicable temperature correction has been made. The Brix or degrees Brix may be determined by any other method which gives equivalent results.

Brix value. The refractometric sucrose value of the juice or citrus product determined in accordance with the "International Scale of Refractive Indices of Sucrose Solutions" and to which the applicable correction for acid is added. The Brix value is determined in accordance with the refractometric method outlined in the Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North

Frederick Avenue, Gaithersburg, MD 20877-2417.

Brix value/acid ratio. The ratio of the Brix value of the juice or citrus product, in degrees Brix, to the grams of anhydrous citric acid per 100 grams of juice or citrus product.

Brix/acid ratio. The ratio of the degrees Brix of the juice to the grams of anhydrous citric acid per 100 grams of the juice.

Citrus. All plants, edible parts and commodity products thereof, including pulp and juice of any orange, lemon, lime, grapefruit, mandarin, tangerine, kumquat or other tree or shrub in the genera *Citrus*, *Fortunella*, or *Poncirus* of the plant family Rutaceae.

Recoverable oil. The percent of oil by volume, determined by the Bromate titration method as described in the current edition of the AOAC INTERNATIONAL.

§ 93.3 Analyses available and location of laboratory.

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science and Technology Division location: Science and Technology Division Citrus Laboratory, 98 Third Street, SW, Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to Chapter 601). Such analyses include tests for acid as anhydrous citric acid, Brix, Brix-acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Florida Division of Fruit and Vegetable Inspection may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) Additional laboratory tests are available upon request at the Science and Technology Division Citrus Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, *Salmonella*, protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

§ 93.4 Analytical methods.

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of AOAC INTERNATIONAL.

(b) Other analytical methods for citrus products may be used as approved by the Director, Science and Technology Division.

§ 93.5 Fees for citrus product analyses set by cooperative agreement.

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the Director, Science and Technology Division. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science and Technology Division and the State of Florida, regarding the set hourly rate and the costs to perform individual tests on Florida citrus products, for the State.

Subpart B—Peanuts, Tree Nuts, Corn and Other Oilseeds**§ 93.10 General.**

Chemical analyses are performed to detect the presence of aflatoxin in lots of shelled peanuts and peanut products, as well as in other nuts and agricultural products. In addition, proximate chemical analyses for quality determination are performed on oilseeds.

§ 93.11 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Aflatoxin. A toxic metabolite produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B₁ and derivatives with a blue fluorescence, aflatoxin B₂ with a blue-violet fluorescence, aflatoxin G₁ with a green fluorescence, aflatoxin G₂ with a green-blue fluorescence, aflatoxin M₁ with a blue-violet fluorescence, and aflatoxin M₂ with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B₁, B₂, G₁, G₂, M₁, M₂, GM₁, B_{2a}, G_{2a}, R₀, B₃, 1-OCH₃B₂, and 1CH₃G₂.

Peanut Administrative Committee (PAC). The committee established under the U.S. Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers.

Peanut Marketing Agreement. The agreement concerning the regulations and instructions set forth since July 12, 1965, by the Peanut Administrative Committee for the marketing of peanuts entered into by handlers of domestically

produced peanuts under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Peanuts. The seeds of the legume *Arachis hypogaea*, and includes both inshell and shelled nuts.

Seed. Any vegetable or other agricultural plant ovule having an embryo that is capable of germinating to produce a plant.

§ 93.12 Analyses available and locations of laboratories.

(a) Aflatoxin testing services. The aflatoxin analyses for peanuts, other nuts, corn, and other oilseed products are performed at the following 8 locations for Science and Technology Division (S&TD) Aflatoxin Laboratories:

- (1) USDA, AMS, S&TD, 1557 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302.
- (2) USDA, AMS, S&TD, 1211 Schley Avenue, Albany, GA 31707.
- (3) USDA, AMS, S&TD, 610 North Main Street, Blakely, GA 31723.
- (4) USDA, AMS, S&TD, 107 South Fourth Street, Madill, OK 73446.
- (5) USDA, AMS, S&TD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434.
- (6) USDA, AMS, S&TD, c/o Golden Peanut Company, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714.
- (7) USDA, AMS, S&TD, c/o Golden Peanut Company, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805.
- (8) USDA, AMS, S&TD, c/o Stevens Industries, Cargill, Inc., 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742.

(b) Peanuts, peanut products, and oilseed testing services. (1) The Science and Technology Division Aflatoxin Laboratories at Dothan, Alabama and Albany and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in paragraph (b)(1) of this section performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in 7 CFR 91.37(b).

(c) Vegetable oil testing services. The analyses for vegetable oils are performed at the Science and Technology Division Midwestern Laboratory, 3570 North

Avondale Ave., Chicago, IL 60618. The analyses for vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the schedules of charges in 7 CFR 91.37(a).

§ 93.13 Analytical methods.

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals:

(a) Analyst's Instruction for Aflatoxin (August 1994), S&TD Instruction No. 1, USDA, Agricultural Marketing Service, Science and Technology Division, South Agriculture Building, 14th & Independence Avenue, SW, P.O. Box 96456, Washington, DC 20090-6456.

(b) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826-3489.

(c) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877-2417.

(d) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), Suite 1120, 1100 Connecticut Avenue, NW, Washington, DC 20036.

§ 93.14 Fees for aflatoxin testing.

(a) The fee charged for any single laboratory analysis for aflatoxins shall be obtained from the schedules of charges in 7 CFR 91.37(a).

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1-AB, 2-AB, 3-AB, and 1-CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science and Technology Division.

(c) The charge for any requested laboratory analysis for aflatoxins not listed shall be based on the standard hourly rate specified in 7 CFR 91.37(b).

§ 93.15 Fees for analytical testing of oilseeds.

(a) The fee charged for any single laboratory analysis for oilseeds shall be obtained from the schedules of charges in 7 CFR 91.37(a).

(b) The charge for any requested laboratory analysis for oilseeds not listed shall be based on the standard hourly rate specified in 7 CFR 91.37(b).

PART 94—[AMENDED]

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056), Agricultural Marketing Act of 1946, Secs. 202-208 as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

2. Part 94 is amended by removing the words "Science Division" and "Science Division's" and adding in their place the words "Science and Technology Division" and "Science and Technology Division's" respectively, everywhere they appear.

3. In § 94.4, paragraph (c) is revised to read as follows:

§ 94.4 Analytical methods.

* * * * *

(c) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877-2417.

* * * * *

4. § 94.303 is revised to read as follows:

§ 94.303 Analytical methods.

The analytical methods used by the USDA laboratories to perform analyses for processed poultry products are found in the latest edition of the Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877-2417.

PART 95—[REMOVED AND RESERVED]

1. Part 95 is removed and reserved.

PART 96—[AMENDED]

1. The authority citation for part 96 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 96, the words "Science Division" are revised to read "Science and Technology Division" everywhere they appear.

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 43, 56, 57, 91(c), Plant Variety Protection Act, as amended; 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402b, 2403, 2426, 2427, 2501(c); Sec. 14, Plant Variety Protection Act amendments of 1994; 7 U.S.C. 2401 note; 29 FR 16210, as amended, 37 FR 6327, 6505.

2. In part 97, the words "Science Division" are revised to read "Science and Technology Division" everywhere they appear.

PART 98—[AMENDED]

1. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 98, the words "Science Division" and "SD" are revised to read "Science and Technology Division" and "S&TD" respectively, everywhere they appear.

3. In § 98.4, paragraph (a)(1) is revised to read as follows:

§ 98.4 Analytical methods.

(a) * * *

(1) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877-2417.

* * * * *

Dated: September 20, 1996.

Jon E. McNeal,

Acting Director, Science and Technology Division.

[FR Doc. 96-24664 Filed 10-1-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 929

[Docket No. FV96-929-3 FIR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division,

AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-1509, FAX# (202) 720-5698, or Tershira Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-5127, FAX# (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, FAX# (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,050 producers of cranberries in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of cranberry producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The cranberry marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on March 4, 1996, and recommended by a 7 to 1 vote an assessment rate of \$0.04 per barrel of cranberries. A mail vote was conducted by the Committee regarding the budget, requiring responses by June 20, 1996. Seven out of eight responses were received in favor of the proposed budget. The 1996-97 recommended